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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,143	12/31/2003	Maurice Behague	069208.0115	7930
23640	7590	10/17/2008	EXAMINER	
BAKER BOTTS, LLP			HAND, MELANIE JO	
910 LOUISIANA			ART UNIT	
HOUSTON, TX 77002-4995			PAPER NUMBER	
			3761	
			NOTIFICATION DATE	DELIVERY MODE
			10/17/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

debbie.allen@bakerbotts.com



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10750143	12/31/2003	BEHAGUE ET AL.	069208.0115

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HOUSTON, TX 77002-4995

## EXAMINER

MELANIE J. HAND

ART UNIT	PAPER
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3761 20081010

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## Commissioner for Patents

1. The reply filed on June 27, 2008 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): Newly amended claims 1-5 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 1 recites a method with steps whose order lends patentability to the claim. Therefore, the amendment to claim 1 to recite the steps of introducing a biological fluid collection device proximate to a fluid source and allowing the fluid to flow from the device to a collection bag without the use of a pump prior to measuring fluid flow rate results in a materially different process from that previously claimed, practiced on a materially different apparatus, i.e. one with two collection means, the device and bag, rather than the single bag recited in the claims as previously presented. Therefore claims 1-5 would have prompted a restriction requirement had they been presented with the claims as originally filed. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-5 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. This leaves no claims to be examined and therefore the amendment is non-responsive.. See 37 CFR 1.111.

2. Since the above-mentioned reply appears to be bona fide, applicant is given ONE (1) MONTH or THIRTY (30) DAYS from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761

/Melanie J Hand/  
Examiner, Art Unit 3761